

# Terms and Conditions

## CONDITIONS OF CONTRACT FOR SUPPLY CONTRACT

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**FORM OF CONTRACT**

**THIS SUPPLY CONTRACT** is made the ..... day of ..... 2007

**BETWEEN**

(1) ..... of/ whose registered office is

situated at .....

(Company registration no: .....) herein referred to as “the CUSTOMER”;

and

(2) ..... of/ whose registered office is

situated at .....

(Company registration no: .....) herein referred to as “the CONTRACTOR”

**IT IS HERBY AGREED** as follows:

# CONDITIONS OF CONTRACT FOR SUPPLY CONTRACT

## PART A: GENERAL

### A1. Interpretations

A1.1 As used in these Terms:

A1.1.1 the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein;

A1.1.2 the masculine includes the feminine and the neuter; and

A1.1.3 the singular includes the plural and vice versa.

A1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

A1.3 Headings are included in these Terms for ease of reference only and shall not affect the interpretation or construction of this Supply Contract.

A1.4 References to "Clauses", "Schedules" and "Parts" are, unless otherwise provided, references to the clauses, schedules and parts of these Terms. References to "Paragraphs" are to the paragraphs of the Schedules.

A1.5 In the event and to the extent only of any conflict between the Clauses together with Schedule 1 and the remainder of the Schedules, the Clauses together with Schedule 1 shall prevail.

A1.6 In the event of and only to the extent of any conflict between the CONTRACTOR'S Tender and these Terms, these Terms shall prevail over the CONTRACTOR'S Tender.

### A2. Scope and Application of these Terms

A2.1 These Terms govern the terms and conditions of the supply of the Products and the provision of Services by the CONTRACTOR to the CUSTOMER according to the requirements specified in the Invitation to Tender.

- A2.2 Nothing in these Terms is intended or shall be construed to create a relationship of agency or partnership between the CUSTOMER and CONTRACTOR. Accordingly, except as expressly authorised herein, neither party shall have any authority to act or make representations on behalf of the other party, and nothing herein shall impose any liability on either party in respect of any liability incurred by the other party to a third party.
- A2.3 These Terms shall be effective from the Commencement Date, which shall be agreed between the parties.

### **A3. Project Management**

- A3.1 Each party shall comply as soon as possible with all reasonable requests made by the other party for information relevant to the Supply Contract.
- A3.2 Where management information reports are requested by the CUSTOMER in relation to this Supply Contract, the CONTRACTOR shall render such reports at no additional charge to the CUSTOMER at the time and in such form as may be specified in Schedule 4 or as otherwise agreed between the parties. The submission, receipt and acceptance of these reports shall not prejudice the rights of the CUSTOMER under this Supply Contract.

### **A4. Warranties and Representations**

- A4.1 The CONTRACTOR warrants and represents that:
- A4.1.1 subject to Clause A.4.3, neither the performance of the Supply Contract, nor the supply or use of the Products nor the performance or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Right of any third party which is enforceable in the United Kingdom (or in any other country where the Products are supplied or used or the Services are performed or used);
  - A4.1.2 subject to Clause A4.3, it owns, has obtained or will obtain valid licences of all Intellectual Property Rights which are necessary to the performance of the Supply Contract, the supply and use of the Products and the performance and use of the Services;
  - A4.1.3 subject to Clause A4.3, the CONTRACTOR has the full capacity and authority to grant, or to procure the grant of, all software licences pursuant to this Supply Contract;
  - A4.1.4 the CONTRACTOR has the full capacity and authority and all necessary consents (including but not limited to, where its procedures

so require, the consent of its Parent Company) to enter into and perform this Supply Contract and that this Supply Contract is executed by a duly authorised representative of the CONTRACTOR;

- A4.1.5 the Products supplied shall operate in accordance with the relevant standards and regulations specified in Schedule 3;
  - A4.1.6 all obligations of the CONTRACTOR pursuant to the Supply Contract shall be performed and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - A4.1.7 the CONTRACTOR shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures; and
  - A4.1.8 in respect of Equipment supplied pursuant to Part B, upon final payment the CUSTOMER shall acquire title to the Equipment free from all encumbrances and the CUSTOMER shall have the right to quiet possession of such Equipment.
- A4.2 The CONTRACTOR warrants that it has taken all requisite corporate and other action to approve the execution, delivery and performance of the Supply Contract, and agrees to produce to the CUSTOMER evidence of such action upon reasonable request.
- A4.3 Clauses A4.1.1, A4.1.2 and A4.1.3 shall not apply insofar as:
- A4.3.1 any such warranty is in respect of any use of a Product or Service in combination with any item not supplied under this Supply Contract or any use of a Product or Service by the CUSTOMER in a manner not reasonably to be inferred from the Specification requirements of the CUSTOMER; or
  - A4.3.2 where a licence from a third party is required and where the CONTRACTOR has not been able to obtain such a licence despite having used all commercially reasonable endeavours so to do. The CONTRACTOR shall notify the CUSTOMER before delivery of the Product or Service if an additional licence is required.
- A4.4 If any Product does not comply with the warranty at Clause A4.1.5, then the CUSTOMER may without prejudice to its other rights and remedies, require the CONTRACTOR to repair or replace the affected Product free of charge within a reasonable period of time.

A4.5 Except as otherwise expressly stated in Parts B and C, all warranties and conditions, whether expressed or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

## **A5. Confidentiality**

A5.1 Each party agrees that:

A5.1.1 it (and any person employed or engaged by it in connection with this Supply Contract in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Supply Contract;

A5.1.2 it (and any person employed or engaged in connection with this Supply Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of the other party;

A5.1.3 it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) other than for the purposes of this Supply Contract by its employees, servants, agents or sub-contractors; and

A5.1.4 without prejudice to the generality of the foregoing, neither it nor any person engaged by it (whether as a servant or a consultant or otherwise) shall use the Confidential Information for the solicitation of business from the other party.

A5.2 The provisions of Clause A5.1 shall not apply to any information which:

A5.2.1 is or becomes public knowledge other than by breach of this Clause A5;

A5.2.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

A5.2.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- A5.2.4 is independently developed without access to the Confidential Information; or
- A5.2.5 is provided to the legal or other professional advisers of either party.
- A5.3 Nothing in this Clause shall be deemed or construed to prevent the CUSTOMER from disclosing any Confidential Information obtained from the CONTRACTOR to:
- A5.3.1 any department, office or agency of the Crown, provided that the CUSTOMER has required that such information is treated as confidential by such departments, offices and agencies, and their servants or agents, including, requiring such departments, offices and agencies to enter into a confidentiality agreement with the CUSTOMER prior to disclosure of the Confidential Information; and
- A5.3.2 any consultant, contractor or other person engaged by the CUSTOMER to the extent reasonably necessary to enable such person to perform its obligations in connection with the Supply Contract, provided that the CUSTOMER shall have required the consultant, contractor or other person to enter into a confidentiality agreement with the CUSTOMER prior to disclosure of the Confidential Information.
- A5.4 Nothing in this Clause shall prevent the CONTRACTOR or the CUSTOMER from using data processing techniques, ideas and know-how gained during the performance of this Supply Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the CUSTOMER or the CONTRACTOR of any Intellectual Property Right.
- A5.5 The CONTRACTOR'S attention is drawn to the provisions of secrecy set out in section 182 of the Finance Act 1989.
- A5.6 Nothing in this Clause shall prevent the CONTRACTOR from carrying out publicity or marketing exercises, subject to Clause A12.

## **A6. Limitation of Liability**

- A6.1 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

A6.2 Subject always to Clause A6.1, the liability of either party for Defaults shall be subject to the financial limits set out in this Clause A6.2.

A6.2.1 The aggregate liability of either party for all Defaults resulting in direct loss of or damage to the Property of the other in respect of any Supply Contract shall in no event exceed five million pounds (£5,000,000).

A6.2.2 The aggregate liability of either party for all Defaults (other than those governed by Clause A6.2.1, but including any liquidated damages accrued pursuant to Clause B2.9.1) in respect of the supply or failure to supply of all items included in this Supply Contract shall in no event exceed the greater of fifty thousand pounds (£50,000) or one hundred and twenty five per cent (125%) of the aggregate total of the Charges paid and payable pursuant to this Supply Contract in respect of that item or the relevant system (where this Supply Contract expresses the item to be part of a system).

A6.2.3 The annual aggregate liability of either party for all Defaults (other than those governed by Clause A6.2.1, but including any Service Credits accrued pursuant to Clause C1.4.1) in respect of all Services provided by the CONTRACTOR under the Supply Contract shall in no event exceed the greater of fifty thousand pounds (£ 50,000) or one hundred and twenty five per cent (125%) of the aggregate total of the annual Charges paid and payable pursuant to this Supply Contract for such services hereunder.

A6.3 Subject always to Clause A6.1, in no event shall either party be liable to the other for:

A6.3.1 loss of profits, business, revenue, goodwill or anticipated savings; and/or

A6.3.2 indirect or consequential loss or damage.

A6.4 The provisions of Clause A6.3 shall not be taken as limiting the right of the CUSTOMER to claim from the CONTRACTOR for directly incurred:

A6.4.1 additional operational and administrative costs and expenses; and

A6.4.2 expenditure or charges rendered necessary as a result of any Default by the CONTRACTOR.

A6.5 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

A6.6 If the performance of the Supply Contract by the CONTRACTOR is delayed by reason of any act or omission of the CUSTOMER or the CUSTOMER'S employees or authorised agents, the CONTRACTOR shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred as a result of the delay, provided always that it notifies the CUSTOMER in writing without undue delay.

## **A7. Termination of the Supply Contract**

A7.1 The CUSTOMER may at any time by notice in writing terminate this Supply Contract as from the date of service of such notice if:

A7.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or its Parent Company (other than for the purposes of a bona fide reconstruction or amalgamation or intra-group transfer provided that in the reasonable opinion of the CUSTOMER such reconstruction or amalgamation or intra-group transfer shall not have a significant adverse effect on the financial standing of the CONTRACTOR);

A7.1.2 the CONTRACTOR passes a resolution, or the Court makes an order that the CONTRACTOR or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the CONTRACTOR or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the CONTRACTOR or its Parent Company is unable to pay its debts in excess of ten thousand pounds (£10,000) within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

A7.1.3 any of the circumstances detailed in Clause A15.2 arise.

A7.2 Without prejudice to Clause A7.1, The CUSTOMER may at any time by notice in writing terminate this Supply Contract forthwith, if the CONTRACTOR commits a material Default and if:

- A7.2.1 such material Default is capable of remedy, and the CONTRACTOR shall have failed to remedy the material Default within thirty (30) days of written notice to the CONTRACTOR specifying the material Default and requiring its remedy; or
- A7.2.2 such material Default is not capable of remedy.
- A7.3 In the event that the circumstances detailed in Clause B4.3 arise, the CUSTOMER may terminate the Supply Contract forthwith by notice in writing.
- A7.4 In the event of any termination of this Supply Contract in accordance with Clause A7.1 or A7.2 or A7.3 prior to the successful acceptance of any of the Products pursuant to Clause B4.2, the CUSTOMER shall be entitled to return any or all of the Products, and the CONTRACTOR shall give a full refund of all monies paid by the CUSTOMER to the CONTRACTOR in connection with such returned items.
- A7.5 In the event of any termination of the Supply Contract for whatever reason, the CUSTOMER shall be entitled to obtain a refund of any Charges paid by the CUSTOMER in respect of any Services which have not been performed by the CONTRACTOR in accordance with the terms of the Supply Contract. The CONTRACTOR shall be entitled to payment of the Charges for all Services which have been provided in accordance with the terms of the Supply Contract.
- A7.6 The CONTRACTOR shall offer all reasonable assistance to the CUSTOMER and any third party engaged by the CUSTOMER to support the Products. The CONTRACTOR shall be entitled to a reasonable remuneration in respect of such assistance, such reasonable remuneration to be agreed with the CUSTOMER.
- A7.7 Termination in accordance with this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- A7.8 If the CUSTOMER is in Default of any obligations under any license granted to it pursuant to this Supply Contract and the CUSTOMER fails to remedy such Default within thirty (30) days of written notice from the CONTRACTOR to the CUSTOMER specifying the Default and requiring its remedy, then:
- A7.8.1 where such Default relates to any item of Software which is material to the performance of the Supply Contract the CONTRACTOR may at any time by notice in writing to the CUSTOMER terminate the Supply Contract together with any licences having been granted by the CONTRACTOR pursuant to the Supply Contract; or
- A7.8.2 in all other circumstances, the CONTRACTOR may at any time by notice in writing to the CUSTOMER terminate the licence for the Software in respect of which the CUSTOMER is in Default and the CONTRACTOR shall thereafter be relieved of such obligations as would otherwise be discharged by means of the provision of the

relevant Software (and the CUSTOMER shall, at the CONTRACTOR'S option, either a) return to the CONTRACTOR, or b) destroy all copies of such Software and any documentation relating to the same).

A7.9 The CUSTOMER shall only be permitted to exercise its rights pursuant to Clause A7.1.1 for three (3) months after each such change of control and shall not be permitted to exercise such rights where the CUSTOMER has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The CONTRACTOR shall notify the CUSTOMER within one (1) month of any change of control taking place.

A7.10 The provisions of Clauses A1, A2, A4, A5, A6, A7.4, A7.5, A7.6, A7.7, A8, A12, A23, A24, B4, and the provisions of Schedule 1 shall survive the termination of this Supply Contract.

## **A8. Recovery of Sums Due**

A8.1 If any sum of money shall be due from the CONTRACTOR, the same may be deducted from any sum then due or which at any time thereafter may become due to the CONTRACTOR under this Supply Contract or any agreement with the CUSTOMER.

## **A9. CUSTOMER'S Responsibilities**

A9.1 Subject to the provisions of Clause A6, the CUSTOMER undertakes to provide to the CONTRACTOR all information services, facilities and responses which are specified in Schedule 2 as the CUSTOMER'S Responsibilities.

A9.2 The CUSTOMER shall be responsible for the preparation and maintenance of the Premises in accordance with the normal office environment. The CONTRACTOR acknowledges that, except where expressly stated, such environmental conditions are sufficient to permit the operation of the Products in accordance with the Supply Contract.

## **A10. Health and Safety Hazards**

A10.1 The CONTRACTOR shall notify the CUSTOMER of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Supply Contract.

A10.2 The CUSTOMER shall notify the CONTRACTOR of any health and safety hazards which may exist or arise at the Premises of the CUSTOMER and which may affect

the CONTRACTOR. The CONTRACTOR shall inform all persons engaged in the performance of this Supply Contract at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

#### **A11. Protection of Personal Data**

A11.1 The CONTRACTOR'S attention is hereby drawn to the Data Protection Act 1998.

A11.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Act which arise in connection with this Supply Contract.

#### **A12. Publicity**

A12.1 Except with the written consent of the other party, neither party shall make any press announcements or publicise this Supply Contract or any part thereof in any way.

A12.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause A12.1 by all their servants, employees, agents and consultants. The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause A12.1 by its sub-contractors.

A12.3 Notwithstanding the provisions of Clause A12.1, the CUSTOMER shall be entitled to publicise this Supply Contract in accordance with any legal or quasi legal obligation upon the CUSTOMER.

#### **A13. CONTRACTOR'S Personnel**

A13.1 The CUSTOMER reserves the right under this Supply Contract to refuse to admit to or to withdraw permission to remain on, any premises owned or occupied by the CUSTOMER any person employed or engaged by the CONTRACTOR, or by a sub-contractor, whose admission would be, in the opinion of the CUSTOMER, undesirable.

A13.2 If and when directed by the CUSTOMER, the CONTRACTOR shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Supply Contract, to any premises owned or occupied by the CUSTOMER, specifying the capacities in which they are concerned with this Supply Contract and giving such other particulars as the CUSTOMER may reasonably require.

A13.3 The decision of the CUSTOMER as to whether any person is to be refused admission to any premises shall be final and conclusive.

#### **A14. Discrimination**

A14.1 The CONTRACTOR shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, regulation, or other similar instrument relating to discrimination (whether in race, gender, religion or otherwise) in employment.

A14.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause A14.1 by all servants, employees, agents and consultants of the CONTRACTOR and all sub-contractors.

#### **A15. Force Majeure**

A15.1 For the purposes of this Supply Contract the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster (other than industrial action defined in Clause A15.2). In the case of the CONTRACTOR such cause will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the CONTRACTOR, its servants, agents or employees.

A15.2 Industrial action taken by the employees, agents or sub-contractors of either party shall not be considered a Force Majeure event for the purposes of Clause A15.1 in relation to the party whose servants, agents or sub-contractors take such action and shall not excuse that party from liability for delay or failure to perform any of its obligations under the Supply Contract.

A15.3 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such force majeure event. However, if any such event prevents either party from performing all of its obligations hereunder for a period in excess of six (6) months, either party may terminate the Supply Contract in accordance with Clause A7.2.2.

A15.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

A15.5 It is expressly agreed that any failure by the CONTRACTOR to perform or any delay by the CONTRACTOR in performing its obligations under this Supply Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the CONTRACTOR shall have entered into any such contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

A15.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **A16. Transfer and Sub-Contracting**

A16.1 This Supply Contract is personal to the CONTRACTOR. The CONTRACTOR shall not assign, novate, or otherwise dispose of this Supply Contract or any part thereof without the previous consent in writing of the CUSTOMER.

A16.2 The CONTRACTOR is not entitled to sub-contract any of its obligations under this Supply Contract excluding the provision of Services unless consent to the sub-contracting of such Services has been permitted by the CUSTOMER. The CONTRACTOR hereby agrees that it shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

A16.3 Subject to Clause A16.4, and subject to providing prior written notice thereof to the CONTRACTOR, the CUSTOMER shall be entitled to assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Supply Contract to any other party, provided that any such assignment, novation, subcontracting or other disposal shall not increase the burden of the CONTRACTOR'S obligations pursuant to this Supply Contract.

A16.4 The CUSTOMER or the successor thereto shall only be able to assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Supply Contract or any part thereof with the previous consent in writing of the CONTRACTOR.

A16.5 The CUSTOMER shall be entitled to disclose to any successor any Confidential Information of the CONTRACTOR which relates to the performance of the Supply Contract; provided that the CUSTOMER shall authorise such successor to use such Confidential Information only for purposes relating to the performance of the Supply Contract and for no other purposes and shall ensure that such body accepts an obligation of confidence in terms similar to Clause A5.

## **A17. Amendments to the Supply Contract**

A17.1 This Supply Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the CUSTOMER by a duly authorised representative of the CUSTOMER and by the CONTRACTOR by a duly authorised representative of the CONTRACTOR.

A17.2 All variations and amendments shall be in the form of an addendum to the Supply Contract.

## **A18. Security**

A18.1 The CUSTOMER shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The CONTRACTOR shall comply with all reasonable security requirements of the CUSTOMER while on the Premises, and shall procure that all of its employees, agents and sub-contractors shall likewise comply with such requirements. The CUSTOMER shall provide the CONTRACTOR upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

## **A19. Communications**

A19.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Supply Contract unless made in writing by or on behalf of the CUSTOMER or as the case may be by or on behalf of the CONTRACTOR.

A19.2 Any notice or other communication whatsoever which either party hereto is required or authorised by this Supply Contract to give or make to the other shall be given or made either by post in a prepaid letter, or by e-mail or by facsimile transmission (confirmed in each case by post in a prepaid letter), addressed to the other party in the manner referred to in Clause A19.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Supply Contract to have been given or made after two days, for a letter, or four hours, for an e-mail or facsimile transmission.

A19.3 For the purposes of Clause A19.2 above the address of each party shall be as set out in Schedule 5.

A19.4 Either party may change its address for service by notice as provided in this Clause.

## **A20. Severability**

A20.1 If any provision of this Supply Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Supply Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Supply Contract, the CUSTOMER and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity.

## **A21. Waiver**

A21.1 The failure of either party to insist upon strict performance of any provision of this Supply Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Supply Contract.

A21.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

A21.3 No waiver of any of the provisions of this Supply Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause A19.

## **A22. Dispute Resolution Procedure**

A22.1 If a liaison committee has been established, all disputes between the parties arising out of or relating to this Supply Contract shall be referred, by either party, to the liaison committee for resolution.

A22.2 If any dispute cannot be resolved by the liaison committee within a maximum of fourteen (14) days after it has been referred under Clause A22.1, or if a liaison committee has not been established, that dispute shall be referred to the Project Manager of the CUSTOMER and the Contract Manager of the CONTRACTOR for resolution.

A22.3 If the dispute cannot be resolved by the parties' representatives nominated under Clause A22.2 within a maximum of fourteen (14) days after it has been referred under Clause A22.2 the dispute may be referred:

- (a) by agreement between the parties it may be referred for final determination to an expert (the "Expert") who shall be deemed to act as expert and not as arbitrator; and
- (b) in all other aspects it shall be determined pursuant to Clause A23.1.

A22.4 The Expert shall be selected by mutual agreement or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of the Institution of Electrical Engineers who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

A22.5 Fourteen (14) days after the Expert has accepted the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Expert and to each other.

A22.6 Both parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute including but not limited to full access to the Products and Services and any documentation or correspondence relating to the Products and Services.

A22.7 The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports pursuant to Clause A22.5.

A22.8 Decisions of the Expert shall, in the absence of fraud and/or manifest error, be final and binding and not subject to appeal.

A22.9 The Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbitrator and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

A22.10 The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the parties.

A22.11 Work and activity to be carried out under this Supply Contract shall not cease or be delayed by this dispute resolution procedure.

### **A23. Law and Jurisdiction**

A23.1 This Supply Contract shall be considered as an agreement made in England and according to English Law and, subject to Clause A22, shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

A23.2 This Supply Contract is binding on the CUSTOMER and its successors and assignees and the CONTRACTOR and the CONTRACTOR'S successors and permitted assignees.

**A24. Remedies Cumulative**

A24.1 Except as previously otherwise provided in this Supply Contract, all remedies available to the CONTRACTOR or to the CUSTOMER for Default under this Supply Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

**A25. Entire Supply Contract**

A25.1 This Supply Contract constitutes the entire understanding between the parties relating to the subject matter of this Supply Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto. This Clause does not apply to any fraudulent misrepresentation.

**A26. Third Party Rights**

A26.1 Notwithstanding any other provision of this Supply Contract nothing in this Supply Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

## **PART B: PRODUCT SUPPLY**

### **B1. Supply of Products**

B1.1 This Part B shall apply where it is agreed between the CUSTOMER and the CONTRACTOR that the CONTRACTOR shall supply the Products specified in the Invitation to Tender to the CUSTOMER in consideration of the payment of the Charges.

### **B2. Delivery and Installation**

B2.1.1 The CONTRACTOR shall deliver the Products to the Premises specified in the Invitation to Tender.

B2.1.2 In the event that there are various Products with different lead-times, the CONTRACTOR shall deliver each Product as and when it becomes available, unless otherwise agreed with the CUSTOMER.

B2.3 The CONTRACTOR shall ensure that all Equipment is delivered to the CUSTOMER with standard electric cabling and with appropriate fitted electric plugs to enable connection into the CUSTOMER'S electricity supplies in the UK where ordered by the Customer or included in the price.

B2.4 The CONTRACTOR shall, pre-load or provide alternative means to Reconfigure, all Equipment and/or Software. Where the CONTRACTOR indicates in its tender that it will supply a gold disk or master image or equivalent as a means of installing Software, and the CUSTOMER requests individual disk copies of Software in addition, then the CONTRACTOR may charge the CUSTOMER for the cost of the media on which such additional copies are supplied.

B2.5 Where requested by the CUSTOMER in the Invitation to Tender, the CONTRACTOR shall install and commission the Product. Such installation and commissioning shall be completed by the CONTRACTOR on or before the agreed date for the completion of installation and commissioning. The CUSTOMER acknowledges that where installation and commissioning is requested by the CUSTOMER additional charges may be payable by the CUSTOMER calculated in accordance with the applicable rates for such Services agreed between the CUSTOMER and the CONTRACTOR.

B2.6 Following any installation and commissioning by the CONTRACTOR, the CONTRACTOR shall, after the installation, reinstate the Premises to the condition on the date on which the said installation commenced to rectify any damage caused by the CONTRACTOR, subject to any changes undertaken by

the CONTRACTOR and agreed by the relevant accommodation officer nominated by the CUSTOMER for such installation. For the avoidance of doubt, the CONTRACTOR shall not be required to make good any changes required for purposes of installing the Product.

B2.7 The CUSTOMER shall undertake all site preparation activities notified to the CUSTOMER by the CONTRACTOR pursuant to Clause B3.1.2 which do not form part of the CONTRACTOR'S obligations.

B2.8 In the event that the CONTRACTOR fails to fulfil any obligation by the date agreed between the parties for such fulfilment, the CONTRACTOR shall, at the request of the CUSTOMER and without prejudice to the CUSTOMER'S other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the CUSTOMER.

B2.9 Without prejudice to any other remedies available to the CUSTOMER:

B2.9.1 if the Product has not been delivered or where applicable, installed, as specified in B2.1.1 from the Commencement Date, the CONTRACTOR shall pay as liquidated damages for each working day of delay a sum equal to one tenth of one per cent (0.1 %) of the Charges for the Product up to a maximum of one hundred (100) working days. Such payment shall be in full and final settlement of the CONTRACTOR'S liability for any loss or damage incurred by the CUSTOMER up to the end of the period in which the liquidated damages are payable; and

B2.9.2 if the Product has not been delivered by the end of the period in which liquidated damages are payable under Clause B2.9.1, or where applicable, if the Product has not been installed and commissioned by the end of the Period in which liquidated damages are payable under Clause B2.9.1, the CUSTOMER shall be entitled to claim any remedy available to it for loss or damage incurred by it after the end of that period.

For the avoidance of doubt, the foregoing remedies may be exercised consecutively but not concurrently.

### **B3. Inspection of Premises**

B3.1 If the CUSTOMER orders an inspection of the Premises, the CONTRACTOR shall inspect the Premises and shall either:

- B3.1.1 satisfy itself that the Premises are suitable for the installation and operation of the Product; or
- B3.1.2 advise the CUSTOMER in writing prior to the date of delivery of the Product of any matter, or aspect of the Premises, which is inadequate or not suitable for installing and operating the Product.
- B3.2 If the CONTRACTOR advises the CUSTOMER that an inspection of the Premises is necessary and the CUSTOMER decides that such an inspection shall not be carried out by the CONTRACTOR, the CONTRACTOR shall not have any liability to the CUSTOMER in respect of the suitability of the Premises.
- B3.3 The CUSTOMER shall use reasonable endeavours to notify the CONTRACTOR whenever an inspection of the Premises might be desirable. However, the CUSTOMER shall not be liable to the CONTRACTOR if it fails so to notify it, and it is for the CONTRACTOR to decide whether or not to inspect the Premises. However, unless the CONTRACTOR inspects the Premises and advises the CUSTOMER in accordance with Clause B3.1.2, it shall be deemed to have accepted that the Premises are suitable for the installation and operation of the Product and shall not be entitled to recover any additional costs from the CUSTOMER which arise from any matter related to the Premises.
- B3.4 An inspection of the Premises shall be treated as a separate Service and shall be subject to the provisions of Part C of this Supply Contract.

#### **B4. Acceptance**

- B5.1 The CUSTOMER shall be entitled to conduct acceptance tests of the Product in accordance with the operating instructions to test whether the Products meet the warranties and representations in Clause B8 and the relevant standards set out in Schedule 3, if any, during the period of twenty (20) days from the later of the following events, as applicable:
  - B4.1.1 delivery of the Product;
  - B4.1.2 where the Product comprises several items of Equipment and/or Software which constitute a system, delivery of the last item which is required for the CUSTOMER to commence testing of the system; and

- B4.1.3 the completion of the installation and commissioning of the Products including any connection to the network.
- B4.2 The CUSTOMER shall notify the CONTRACTOR of the successful completion of any acceptance tests and of any defects which are identified by the CUSTOMER during any acceptance tests. However, if the CUSTOMER has not notified the CONTRACTOR of any defects by the end of the acceptance testing period the Product shall be deemed to have been accepted by the CUSTOMER.
- B4.3 If any defect which has been notified to the CONTRACTOR pursuant to Clause B4.2 has not been rectified by the end of the acceptance testing period, the CONTRACTOR shall rectify the defect within a further period of twenty (20) days or as otherwise agreed between the parties. If the defect has not been rectified by the end of such further period the CUSTOMER shall, without prejudice to its other rights and remedies, be entitled:
  - B4.3.1 to reject the Product, in which event the CONTRACTOR shall use all reasonable endeavours to repair or replace the Product with an identical Product within one (1) working day, and in any event the CONTRACTOR shall repair or replace the Product with an identical Product within the same lead-time that applied to the initial delivery; or
  - B4.3.2 to reject the Product and terminate this Supply Contract in accordance with Clause A7.3.
- B4.4 Any replacement Product which is supplied pursuant to Clause B4.3.1 or Clause B9 shall be subject to acceptance testing pursuant to this Clause.
- B4.5 If the CONTRACTOR sends any Product away from or back to the Premises for repair or for any other reason, the CONTRACTOR shall be responsible for:
  - B4.5.1 the packing, carriage and insurance of the Product; and
  - B4.5.2 all costs associated with the despatch, repair, return and reinstallation of the Equipment.

## **B5. Title and Risk**

- B5.1 Title to the Equipment shall vest in the CUSTOMER upon final payment for such Equipment in accordance with Clause B6.

B5.2 Risk in such Equipment shall vest in the CUSTOMER upon delivery of the Equipment in accordance with Clause B2.1 as evidenced by a delivery note duly signed by an authorised representative of the CUSTOMER.

## **B6. Charges**

B6.1 In consideration of the supply of the Product and the performance of any Services in accordance with the terms of The Invitation to Tender and the CONTRACTOR'S Tender, the CUSTOMER shall pay the Charges quoted by the CONTRACTOR in his Tender or, if applicable, shall pay the charges subsequently agreed between the CUSTOMER and the CONTRACTOR.

B6.2 The CONTRACTOR shall be entitled to send an invoice to the CUSTOMER following the despatch of the Products to the CUSTOMER.

B6.3 The CUSTOMER shall make payment within thirty (30) days of receipt of a valid invoice. However, where the nature of the Product is such that it is agreed between the parties for an acceptance period of more than twenty (20) days, twenty five per cent (25%) of the Charges or as agreed by the parties shall be retained by the CUSTOMER pending acceptance or deemed acceptance of the Product. Where the CONTRACTOR is supplying and/ or installing Products which must be tested together, then the CUSTOMER shall only be obliged to make payment within thirty (30) days of receipt of the valid invoice which related to the last item of Equipment or Software to be delivered. However such payment shall be without prejudice to the CUSTOMER'S rights and remedies under Paragraph B4.3 or otherwise in the event that payment is made before the date of acceptance or deemed acceptance whichever is later.

B6.4 Where the CONTRACTOR is a value added reseller any payment made by the CUSTOMER to the CONTRACTOR shall fully satisfy the CUSTOMER'S obligations to the CONTRACTOR or any of its suppliers or sub-contractors for payment of the charges due.

B6.5 In the event that the CONTRACTOR, in accordance with the terms of this Supply Contract, enters into a supply contract or a sub-contract in connection herewith, the CONTRACTOR shall ensure that a term is included in the supply contract or sub-contract which requires the CONTRACTOR to pay all sums due thereunder to the sub-contractor or supplier within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

**B7. Value Added Tax**

B7.1 The CUSTOMER shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law, from time to time.

**B8. Warranties and Representations**

B8.1 The CONTRACTOR warrants and represents that upon acceptance of the Product the Product shall, for the period specified in the Invitation to Tender or the CONTRACTOR'S Tender or, where no such period is specified, for the period of one (1) year:

B8.1.1 the Product shall meet all applicable specifications for such Product, whether contained in the Invitation to Tender, or in the manufacturer's published specifications, or published separately by the CONTRACTOR, or otherwise published by the manufacturer; or

B8.1.2 where the CUSTOMER has stated, in the Invitation to Tender, that the Product must meet particular requirements, or where an authorised CONTRACTOR representative has advised in writing that the Product will meet particular requirements, the Product will meet such requirements;

B8.1.3 the Product shall operate in accordance with the relevant standards and regulations in Schedule 3.

B8.1.4 the Product shall operate and be fully compatible with the normal United Kingdom office environment as at the date of delivery or, where applicable, such environmental conditions as are agreed by the parties.

B8.2 Following acceptance, the CUSTOMER shall, subject to payment of the relevant Charges, acquire title to the Equipment free from all encumbrances and the CUSTOMER shall have the right to quiet possession of the Equipment.

**B9. Loss of or Damage to the Product**

B9.1 The CONTRACTOR shall, on being so ordered by the CUSTOMER, with all possible speed make good any loss or damage affecting the Product and shall notwithstanding such loss or damage proceed with and complete the performance of its obligations pursuant to this Supply Contract. The

CUSTOMER shall pay the costs of making good and shall grant the CONTRACTOR a reasonable extension of time, unless the loss or damage is occasioned by the Default of the CONTRACTOR.

**B10. Damage to Plant, Tackle and Tools**

B10.1 All plant, tackle and tools at the Premises provided by or on behalf of the CONTRACTOR shall stand at the risk and be in the sole charge of the CONTRACTOR.

B10.2 The CONTRACTOR shall be required to remove all such plant, tackle and tools which it brings to the Premises.

B10.3 The CONTRACTOR shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

**B11. Packaging**

B11.1 No additional charge shall be made for packaging used for articles or materials supplied by the CONTRACTOR. Such packaging shall become the property of the CUSTOMER upon delivery thereof unless the CONTRACTOR notifies the CUSTOMER otherwise.

B11.2 Where requested by the CUSTOMER, the CONTRACTOR shall promptly remove from the Premises packaging referred to in Clause B11.1.

**B12. Documentation**

B12.1 The CONTRACTOR shall supply all Documentation with the Product.

B12.2 The CONTRACTOR warrants that the Documentation comprises:

B12.2.1 a record of the configuration of the Equipment/Software at the date of delivery;

B12.3.2 operator and management manuals and user guides where these are available from the manufacturers at no additional cost.

**B13. Identification of Product**

B13.1 The CONTRACTOR shall ensure that each product can be readily identified by reference to the manufacturer's name, the Product type, serial number (if any) or such other identification as may be agreed between the parties, where the Product has not been so identified by the manufacturer.

## **B14. Progress Reports**

B14.1 Where progress reports are specified in the Invitation to Tender, the CONTRACTOR shall render such reports as to the progress of the mutual obligations under the Supply Contract at the time and in such form as may be specified or as otherwise agreed between the CUSTOMER and the CONTRACTOR.

B14.2 Submission, receipt and acceptance of these reports shall not prejudice the rights of either party under the Supply Contract.

## **PART C: PRODUCT SUPPORT SERVICES**

### **C1. Product Support Services**

C1.1 This Part C shall apply where it is agreed between the CUSTOMER and the CONTRACTOR that the CONTRACTOR shall, subject to Clause C1.2, and in consideration of the payment of the Charges, supply the Product Support Services specified in the Invitation to Tender to the CUSTOMER in accordance with any agreed Service Levels.

C1.2 The CONTRACTOR shall not be obliged to supply Product Support Services in respect of a Product which has been modified by a person other than the CONTRACTOR without the CONTRACTOR'S approval.

C1.3 If, during the performance of the Product Support Services, replacement parts are fitted by the CONTRACTOR to any Equipment, the parts removed shall become the property of the CONTRACTOR unless retained by the CUSTOMER at its discretion. In the event that parts are retained by the CUSTOMER pursuant to this Clause, the CONTRACTOR shall be entitled to charge the CUSTOMER in respect of such parts a price to be agreed between the parties.

C1.4 If the CONTRACTOR fails to supply the Product Support Services in accordance with the Service Levels or the Invitation to Tender or the CONTRACTOR'S Tender (as appropriate), the CONTRACTOR shall:

C1.4.1 as an adjustment to the Charges, credit the CUSTOMER with Service Credits;

- C1.4.2 arrange all such additional resources as are necessary to perform the Product Support Services in accordance with the Service Levels as early as practicable thereafter at no additional charge to the CUSTOMER; and
- C1.4.3 at the request of the CUSTOMER, promptly remedy any Default or re-perform any non-conforming Product Support Service at no additional charge to the CUSTOMER.
- C1.5 If the Product Support Services are not supplied in accordance with the Service Levels and such failure is outside the scope of the provision for Service Credits the CUSTOMER shall be entitled to obtain such remedies as may be available to it either under the Supply Contract or otherwise at equity or law, including but not limited to the withholding from payment to the CONTRACTOR or recovering as a sum of money due from the CONTRACTOR the Charges or any portion thereof that are allocable to the Default or non-conforming Product Support Services.

## **C2. Duration of the Product Support Services**

- C2.1 The parties shall agree the period for the provision of the Product Support Services which, subject to the rights of termination contained herein in Part A, shall be for any combination of a period of one (1), three (3) or five (5) consecutive years amounting to a consecutive period of not more than five (5) years from the Commencement Date.

## **C3. Inspection of Premises**

- C3.1 If the CUSTOMER orders an inspection of the Premises, the CONTRACTOR shall inspect the Premises and shall either:
  - C3.1.1 satisfy itself that the Premises are suitable for the support of the Product; or
  - C3.1.2 advise the CUSTOMER in writing prior to the date of delivery of the Product of any matter, or aspect of the Premises, which is inadequate or not suitable for the support of the Product.
- C3.2 If the CONTRACTOR advises the CUSTOMER that an inspection of the Premises is necessary and the CUSTOMER decides that such an inspection shall not be carried out by the CONTRACTOR, the CONTRACTOR shall not have any liability to the CUSTOMER in respect of the suitability of the Premises for the support of the Product.
- C3.3 The CUSTOMER shall use reasonable endeavours to notify the CONTRACTOR whenever an inspection of the Premises might be desirable.

However, the CUSTOMER shall not be liable to the CONTRACTOR if it fails so to notify it, and it is for the CONTRACTOR to decide whether or not to inspect the Premises. However, unless the CONTRACTOR inspects the Premises and advises the CUSTOMER in accordance with Clause C3.1.2, it shall be deemed to have accepted that the Premises are suitable for the installation and operation of the Product and shall not be entitled to recover any additional costs from the CUSTOMER which arise from any matter related to the Premises.

#### **C4. Published Specifications**

C4.1 The CONTRACTOR shall perform all necessary routine and remedial maintenance required for the Product to operate in accordance with Clause C9.

C4.2 The CUSTOMER shall permit the CONTRACTOR such access to the Product as is reasonably required for the CONTRACTOR to comply with its obligations under Clause C9.

#### **C5. Additional Resources**

C5.1 In the event that the Product, or any item of the Equipment, does not operate, or in respect of Software fails to operate, in accordance with the warranties and representations set out in Clause C9, the CONTRACTOR shall, at the request of the CUSTOMER and without prejudice to the CUSTOMER'S other rights and remedies, arrange all such additional resources as are necessary to correct the said failure as early as practicable thereafter, at no additional charge to the CUSTOMER.

#### **C6. Fault Reporting and Record Keeping**

C6.1 The CUSTOMER shall notify the CONTRACTOR of all Faults which result in a failure by the Product (whether Equipment or Software) to meet the warranties and representations set out in Clause C9 and which come to the CUSTOMER'S attention.

C6.2 In respect of Software, the CUSTOMER shall maintain at the Premises a daily log recording any Faults which occur. The daily log shall be in a format agreed between the parties and shall be available for inspection by the CONTRACTOR.

## **C7. Charges**

- C7.1 In consideration of the performance of the Product Support Services in accordance with the terms of the Supply Contract, the CUSTOMER shall pay the relevant Charges agreed between the parties.
- C7.2 The CONTRACTOR shall submit an invoice at the end of the period to which the Services relate or as otherwise agreed between the parties.
- C7.3 The CUSTOMER shall make payment within thirty (30) days of receipt of a valid invoice from the CONTRACTOR.
- C7.4 In the event that the CONTRACTOR, in accordance with the terms of this Supply Contract, enters into a supply contract or a sub-contract in connection herewith, the CONTRACTOR shall ensure that a term is included in the supply contract or the sub-contract which requires the CONTRACTOR to pay all sums due thereunder to the sub-contractor or supplier within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

## **C8. Value Added Tax**

- C8.1 The CUSTOMER shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

## **C9. Warranties and Representations**

- C9.1 Subject to Clause C9.2, the CONTRACTOR warrants and represents that throughout the duration of the provision of Product Support Services pursuant to Clause C2:
- C9.1.1 each Product shall meet all applicable specifications for such Product, whether contained in Schedule 3, or in the Invitation to Tender, or in the manufacturer's published specifications, or published separately by the CONTRACTOR, or otherwise published by the manufacturer or CONTRACTOR;
- C9.1.2 where the CUSTOMER has stated, in the Invitation to Tender that the Product must meet particular requirements, or where an authorised CONTRACTOR representative has advised in writing that the Product will meet particular requirements, the Product will meet such requirements;

C9.1.3 the Product shall operate in accordance with the relevant standards and regulations in Schedule 3;

C9.1.4 the Product shall operate in and be fully compatible with the normal United Kingdom office environment or where applicable, such environmental conditions as are agreed by the parties; and

C9.1.5 the CONTRACTOR has the full capacity and authority to perform the Product Support Services.

C9.2 Where the CUSTOMER does not elect to take Product Support Services from the date of acceptance of the item of Equipment or Software (as applicable) pursuant to Clause B5.2, the CONTRACTOR shall carry out an inspection of the Product and may require that the Product is restored to the standard set out in Clause B9.1 at the CUSTOMER'S cost before the Product Support Services may commence.

#### **C10. Despatch of Product**

C10.1 If the CONTRACTOR sends any Product away from or back to the Premises for repair or for any other reason, the CONTRACTOR shall be responsible for:

C10.1.1 the packing, carriage and insurance of the Product; and

C10.1.2 all costs associated with the despatch, repair, return and reinstallation of the Product.

#### **C11. Moves and Changes**

C11.1 Subject to Clause C11.2 and if so requested by the CUSTOMER, the CONTRACTOR shall move the Product or any part thereof either within the Premises or to another premises.

C11.2 The cost of such moves in accordance with Clause C11.1 shall be agreed between the parties.

C11.3 The Product or part thereof, after any move in accordance with Clause C11.1 shall continue to be subject to the Product Support Services.

## **C12. Housing and Operation**

C12.1 The CUSTOMER shall maintain such environmental conditions at the Premises as are agreed between the parties.

C12.2 The CUSTOMER shall operate the Product in accordance with the manufacturer's recommendations as set out in the Documentation.

## **C13. Consumables**

C13.1 The CUSTOMER shall only use, with the Equipment, consumables which comply with specifications recommended by the manufacturer in the Documentation.

## **C14 Intellectual Property Rights**

C14.1 Unless otherwise agreed between the parties, the CUSTOMER shall not acquire title to any equipment or tangible property used by the CONTRACTOR, nor to any Intellectual Property Rights in any software or other technology employed by the CONTRACTOR in the provision of the Product Support Services. The CONTRACTOR hereby grants a non-exclusive licence to the CUSTOMER to use such software, equipment (or other relevant technology) for receipt of the Services.

## SCHEDULE 1

### INTERPRETATIONS

#### (Clause A1.1)

The expressions set out below shall have the meanings ascribed thereto:

**"Associated Company"** means any subsidiary, holding company, or company with a holding company in common (as defined in Section 736 of the Companies Act 1985);

**"Charges"** shall mean the prices in the CONTRACTOR'S Tender or as otherwise agreed between the parties.

**"Commencement Date"** means the date agreed between the parties for the commencement of the Supply Contract.

**"Confidential Information"** means all information designated as such by either party in writing together with all such other information which relates to the business, affairs, Products, Services, developments, trade secrets, know-how, personnel, customers and suppliers of either party which may reasonably be regarded as the confidential information of the disclosing party;

**"CONTRACTOR"** means the contractor specified in the Form of Contract;

**"CONTRACTOR'S Tender"** means the Tender prepared by the CONTRACTOR in response to the CUSTOMER'S Invitation to Tender;

**"CUSTOMER"** means the customer specified in the Form of Contract;

**"CUSTOMERS'S Data"** means all information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium and which are supplied or in respect of which access is granted to the CONTRACTOR by the CUSTOMER under the Supply Contract, or which the CONTRACTOR is required to generate under the Supply Contract.

**"CUSTOMER'S Responsibilities"** means the CUSTOMER'S responsibilities listed in the Supply Contract.

**"Default"** means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Supply Contract and in respect of which such party is liable to the other;

**"Documentation"** means any hard or soft copy operating instructions, installation instructions or technical manuals which are normally supplied by the manufacturer or supplier with the Product;

**"Equipment"** means the items, apart from Software and Services, ordered from the CONTRACTOR by the CUSTOMER as set out in the Invitation to Tender and the CONTRACTOR'S Tender;

**"Fault"** means any unusual or undesirable occurrence in respect of the Products or any part thereof;

**"These Terms"** means these Clauses (Parts A-C) and the Schedules;

**"Intellectual Property Rights"** means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

**"Lead-Time"** means the estimated time for delivery of the Products from the Commencement Date to any destination within the mainland of Great Britain;

**"NCC"** means the National Computing Centre Ltd, Manchester;

**"Parent Company"** means any company which is the Holding Company of the CONTRACTOR. The term "Holding Company" shall have the meaning ascribed by Section 736 and 736A of the Companies Act 1985 or any statutory re-enactment or amendment thereto;

**"Premises"** means the address of the CUSTOMER as set out in the Invitation to Tender and in Schedule 5 of the Supply Contract;

**"Product"** means the Equipment and/or the Software to be supplied by the CONTRACTOR as specified in the Invitation to Tender and the CONTRACTOR'S Tender;

**"Product Support Services"** means any Services relating to the support of Products performed hereunder as more particularly described in the Supply Contract;

**"Property"** means tangible property and does not include the Equipment or any part thereof before it has been accepted in accordance with the Supply Contract;

**"Quarter Days"** means the date being three months from the commencement of the Initial Period and each subsequent date every three months.

**"Reconfigure"** means to recreate the configuration of the Equipment and/or Software as set up pursuant to the Supply Contract;

**"Services"** means the Services to be performed by the CONTRACTOR to meet the requirements of the Invitation to Tender;

**"Service Validation Tests"** means the service validation tests specified in the Invitation to Tender and the CONTRACTOR'S Tender;

**"Software"** means the package software specified by the customer in the Invitation to Tender;

**"Source Code"** means software in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;

**"Service Levels"** means the service levels agreed between the parties;

**"Service Credits"** means the service credits agreed between the parties;

**"Invitation to Tender"** means the Invitation to Tender issued by the CUSTOMER setting out the CUSTOMER'S requirement in respect of the supply or leasing of the Products and/or its Services requirement;

**"Supply Contract"** means these Terms and the Invitation to Tender and the CONTRACTOR'S Tender;

**"Use"** means the right of the CUSTOMER to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display) or otherwise to utilise the Software for the purposes of processing the CUSTOMER'S Data. Except to the

extent permitted by law, such right of Use shall not include the right to reverse assemble, reverse compile, decode or otherwise translate the Software;

**"Working day"** means any day other than a Saturday, a Sunday, or a day which is a common law or statutory bank holiday in England, Wales, Scotland or Northern Ireland, as appropriate.

## **SCHEDULE 2**

### **CUSTOMER'S RESPONSIBILITIES**

The following list of responsibilities is in addition to and/or supports those responsibilities contained, whether expressly or implicitly, within the Clauses and Schedules of the Supply Contract:

1. The CUSTOMER shall discharge in a timely fashion all of the responsibilities contained within this Schedule.
2. Subject to the provisions of Clause A5, the CUSTOMER shall comply with all reasonable requests made by the CONTRACTOR for information which is necessary for the CONTRACTOR to fulfil its obligations under the Supply Contract.
3. Subject to the terms and conditions of the Supply Contract, the CUSTOMER shall make available personnel and shall provide access to premises, where necessary to enable the CONTRACTOR to fulfil its obligations under the Supply Contract.
4. Subject to the terms and conditions of the Supply Contract, the CUSTOMER shall make available to the CONTRACTOR secure premises for the duration of any installation service and shall provide adequate and suitable environmental support and office space for the CONTRACTOR'S personnel to be located.
5. Where the CUSTOMER requests installation of any combination of Software and the CUSTOMER'S own application Software, then, prior to installation, the CUSTOMER shall provide written details of the installation standards to which it expects the CONTRACTOR to adhere.
6. The CUSTOMER shall operate all Products and use all Services in accordance with the manufacturer's or supplier's instructions and the terms of any applicable agreements.
7. The CUSTOMER shall use all consumables together with the Products in compliance with the manufacturer's specification for such consumables.
8. Where the CUSTOMER requests that the CONTRACTOR installs a Product together with components supplied by a third party, the CUSTOMER shall ensure that such components are suitable for use, that they are made available to the CONTRACTOR prior to the installation/commissioning date and that any third party software licences are valid in accordance with the manufacturer's terms and conditions.

9. The CUSTOMER shall return to the CONTRACTOR all parts of the Products which have been replaced under terms of warranty or maintenance. If the CUSTOMER wishes to retain such parts on grounds of security or confidentiality, the CONTRACTOR shall be entitled to charge the CUSTOMER a price to be agreed between the parties in respect of such parts.
10. If the CUSTOMER elects to establish a liaison committee, the CUSTOMER shall work closely with the CONTRACTOR in order to establish the liaison committee, its regular meeting review schedule, the procedures for performance review, and the escalation of both implementation and operational issues.
11. The CUSTOMER shall make available adequate resources for contract management and liaison meetings with the CONTRACTOR. The CUSTOMER shall also make available adequate resources to act as an interface between end-users and the CONTRACTOR (e.g. to deal with technical queries prior to contacting the CONTRACTOR).

## **SCHEDULE 3**

### **METHODS AND STANDARDS**

#### **1.0 Introduction**

- 1.1 Where this agreement involves the procurement of IT products (hardware components and related consumables), such items should conform to the standards described herein.
- 1.2 Where this agreement facilitates the procurement of IT product related services (such as a project to implement the installation, maintenance, and support services for hardware, software and network infrastructure), then such projects must be conducted using a recognised project management methodology (such as PRINCE 2) in order that it can be identified as having been successful for the purposes of public accountability.

#### **2.0 Hardware Standards**

- 2.1. Glossary of terms:

BS British Standard

EN European Norm

ISO International Organisation for Standardisation

IEC International Electro-technical Commission

ECMA European Computer Manufacturers Association

## 2.2 Safety

Hardware and other electrical apparatus should conform to the safety requirements as detailed in one or more of the standards set out below.

|   |  |
|---|--|
| <p>BS EN<br/>60950<br/>:1992</p>        | <p>Specification for the safety of IT equipment including electrical business equipment</p>  |
| <p>IEC<br/>60950<br/>(1999-<br/>04)</p> | <p>Applies to information technology equipment including electrical business equipment and associated equipment, with a rated voltage not exceeding 600 V. Specifies requirements intended to ensure safety for the operator and layman who may come into contact with the equipment and, where specifically stated, for service personnel. Supersedes IEC 60380 and 60435</p>   |
| <p>BS EN<br/>60065:<br/>1994</p>        | <p>Safety requirements for mains operated electronic and related apparatus for household and similar general use</p>   |
| <p>BS EN<br/>60825:<br/>-1 1994</p>     | <p>Safety of Laser Products – Equipment classification, requirements and user’s guide. (for example - laser printing apparatus, CD read/write equipment)</p>   |
| <p>ECMA<br/>287<br/>June<br/>1999</p>   | <p>The advent of multimedia products has blurred the borderline between different classes of products, like IT equipment, audio-video equipment, communication equipment, and the environment within which the equipment is used.</p> <p>Personal computers which used to be connected only to printers and occasionally modems are now frequently connected to loudspeakers, scanners, video and audio tape recorders, TV sets. The environment has changed from the office (or home office), to include all the rooms of the house, and, for portable equipment, outdoor leisure areas. The age of the user and of the bystander is continuously reducing.</p> <p>To cope with this situation, ECMA TC12, in close co-operation with EACEM WG4/PT4.2, decided to develop this generic standard for safety of electronic equipment.</p> |

|                   |   |
|-------------------|---|
|                   | <p>This standard is applicable to electronic equipment with a rated voltage not exceeding 600 V rms and intended for domestic or professional use. The equipment may be powered from an a.c. or d.c. supply and can be an independent unit or a system of interconnected units.</p> <p>The electronic equipment considered in this standard can be:</p> <ul style="list-style-type: none"> <li>• office equipment;</li> <li>• consumer electronic equipment;</li> <li>• telecommunication terminal equipment;</li> <li>• or a combination of the above.</li> </ul> <p>The requirements of this standard are intended to provide protection to persons as well as to the surrounding of the equipment.</p> |
| BS EN 41003       | Particular safety requirements for equipment to be connected to telecommunication networks  |
| BS ISO / IEC 8802 | Information Technology - telecommunications and information exchange between systems. Local and metropolitan area networks  |

### 2.3 Noise & ergonomics

Hardware should be constructed so that noise levels do not exceed the thresholds as stipulated in the following device related standards:

|                |  |
|----------------|--|
| BS 7135        | Noise emitted by computer and business equipment             |
| BS EN 7179 – 5 | Ergonomics and design of visual display terminals in offices |
| BS EN 7179 – 6 |  |
| BS EN          | Ergonomic requirements for office work with visual           |

|             |                   |
|-------------|-------------------|
| ISO<br>9241 | display terminals |
|-------------|-------------------|

## 2.4 Other standards

There are a plethora of established and emergent standards for the all the different aspects of Information Technology. For this reason it is not practicable to prescribe the use of any particular one in respect of network infrastructure, and communication protocols simply because the document will become obsolete in a very short period of time.

Therefore, it is a requirement of this contract that as well as complying with the safety and environmental standards set out above, systems implemented under this agreement must comply with the relevant BS or ISO standard (or standards) in force at the time of purchase.

## **SCHEDULE 4**

### **MANAGEMENT INFORMATION REPORTS**

1. The CONTRACTOR shall submit management information reports to the CUSTOMER on a monthly basis, unless otherwise agreed, covering the period since the date of the previous management information report and showing the progress of its obligations under the Supply Contract.
  
2. The management information report shall include, without limitation, the following details with reference to the Supply Contract:
  - 2.1 the location to which the Products/Services were supplied;
  
  - 2.2 the contractual date by which the Products were to be supplied;
  
  - 2.3 the actual date by which the Products were supplied;
  
  - 2.4 the contractual date by which the Products were to be installed and commissioned;
  
  - 2.5 the actual date by which the Products were installed and commissioned;
  
  - 2.6 the Products on which acceptance tests are being performed;
  
  - 2.7 the Products which have failed acceptance tests;
  
  - 2.8 Products and Services which have been ordered by the CUSTOMER but not yet supplied, the status of such Products and Services, and a forecast date of when they will be supplied.

## **SCHEDULE 5**

### **DELIVERY AND CONTACT DETAILS**

1. For the purposes of this Supply Contract, the address of the CUSTOMER'S Premises to which the Products shall be delivered is:

(To be confirmed.)

2. The point of contract for the CUSTOMER shall be:

(To be confirmed.)

3. The point of contact for the CONTRACTOR shall be:

(To be confirmed.)

**AS WITNESS** the hands of the parties hereto on the day and year first above written.

Executed as a Deed by the CUSTOMER

namely .....

acting by a director and its secretary/ two directors whose signatures are here subscribed

Name \_\_\_\_\_

Signature \_\_\_\_\_

*DIRECTOR*

and

Name \_\_\_\_\_

Signature \_\_\_\_\_

*DIRECTOR/ SECRETARY*

Executed as a Deed by the CONTRACTOR

namely .....

acting by a director and its secretary/ two directors whose signatures are here subscribed

Name \_\_\_\_\_

Signature \_\_\_\_\_

*DIRECTOR*

and

Name \_\_\_\_\_

Signature \_\_\_\_\_

*DIRECTOR/ SECRETARY*